

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

iRACING.COM MOTORSPORT SIMULATIONS,
LLC, a Delaware Limited Liability Company,

Plaintiff,

V.

TIM ROBINSON, individually and d/b/a
www.ow-racing.com, www.torn8oalley.com
and www.First-Racing-Sucks.com,

Defendant.

[illegible]

Civil Action No.
05-11639 NG

**PLAINTIFF'S EMERGENCY
MOTION TO COMPEL
PRODUCTION OF
UNDISCLOSED
COMMUNICATIONS**

Plaintiff iRacing Motorsport Simulations, LLC (“iRacing”) respectfully submits this emergency motion to compel the production of undisclosed communications. For the reasons set forth below, iRacing requests that this Court enter an order by 5:00 p.m. on Monday February 2, 2009, compelling Defendant Tim Robinson (“Robinson”) to produce any e-mail communications between Robinson and Tim McArthur (“McArthur”) or between Joseph Ryan (“Ryan”), attorney for Robinson, and McArthur by 5:00 p.m. on Tuesday February 3, 2009.

On January 21, 2009, Robinson submitted a draft version of the Joint Pretrial Memorandum to iRacing. This is the first time that Robinson listed McArthur as a possible witness for this trial. Thereafter, Robinson submitted a draft trial affidavit from McArthur in support of Robinson's case in chief. To the extent that there were communications between either (1) Robinson and McArthur; or (2) Ryan and McArthur relating to Robinson's conduct or McArthur's testimony, these documents are potentially relevant and should be produced prior to trial.

Indeed, Robinson's continued failure to make the required pretrial disclosures and attempt to hide McArthur as a witness to support Robinson's defense have prejudiced iRacing. Indeed, iRacing is unable to take discovery into McArthur's knowledge of this case, including requesting any e-mail communications between McArthur and either Robinson or Ryan.

Accordingly, iRacing respectfully requests that this Court enter an Order compelling Robinson to produce any communications between McArthur and either Robinson or Ryan by Tuesday, February 3, 2009, so that iRacing may review these documents to use in cross-examining McArthur at trial. Proposed document requests are attached as Exhibit A to the [Proposed] Order Granting Plaintiff's Emergency Motion to Compel Production of Undisclosed Communications, submitted herewith.

DATED: January 30, 2009

Respectfully submitted,

iRacing.com Motorsport Simulations, LLC
By its attorneys,

/S/ Irwin B. Schwartz
Irwin B. Schwartz (BBO# 548763)
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Certification Under Local Rule 7.1(a)(2)

I, Nicholas R. Cassie, attorney for Plaintiff iRacing.com Motorsport Simulations, LLC, hereby certify that I complied with Local Rule 7.1 in that I attempted to confer with defendant's counsel by telephone on January 30, 2009, in a good faith attempt to narrow and/or resolve the discovery issues addressed in this motion. The conference did not result in defendant's assent to this motion.

/s/ Nicholas R. Cassie
Nicholas R. Cassie

Certificate of Service

I, Irwin B. Schwartz, attorney for Plaintiff iRacing.com Motorsport Simulations, LLC, hereby certify that on this 30th day of January 2009, I filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to: Joseph F. Ryan, Lyne Woodworth & Evarts LLP, 12 Post Office Square, Boston, MA 02109, counsel for Defendant Tim Robinson.

/s/ Irwin B. Schwartz
Irwin B. Schwartz